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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: Hogendoorn
Serial No.: 09/862,800
Filed: 05/21/2001
Group Art Unit: 3624
Examiner: Akers, Geoffrey R.
For: DUTCH AUCTION SYSTEM WITH PREREGISTERED
BID FEATURE

REQUEST FOR RECONSIDERATION

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is responsive to the Final Office Action mailed on March 5, 2004.

Applicant respectfully traverses the rejections under 35 U.S.C. §103. As previously explained, there is no motivation for making the combinations and no *prima facie* case of obviousness against any of the pending claims. Applicant respectfully urges the Examiner to withdraw the rejections. Applicant is confident that they will not even survive an appeals conference. Rather than forcing Applicant to expend further resources pursuing an appeal, Applicant respectfully asks the Examiner to reconsider the position taken in the Final Office Action.

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The comments made in the previous Response and those that follow provide the Examiner with a legitimate legal basis to say that the claims are not obvious.

Applicant respectfully traverses the rejection of claims 1-16 based upon the improper combination of *Godin* with *Barzilai*.

The combination of *Godin* and *Barzilai* cannot be made. There is no motivation or suggestion within the art for making the combination and the Examiner cannot use Applicant's disclosure as a road map for piecing together the prior art using improper hindsight reasoning. A pre-registered bid feature in the *Godin* reference would be useless or redundant, at best, and there is no motivation for making the combination because there is no benefit for doing so. Nothing in *Godin* lends itself to the notion that it is incomplete or needs modification. The skilled artisan would find no suggestion or motivation to add a pre-registered bid to *Godin's* arrangement.

The *Godin* reference specifically teaches that an individual can place a bid during a descending price auction when the price matches a price that an individual is willing to pay. After the individual is provided with information regarding the total cost to the individual based on that bid price, the individual still has the ability to withdraw or cancel the bid. Column 7, lines 34-38 for example, teach, "With the present system, it can be appreciated that although the user participates in the auction process, the actual commitment to purchase the product is not made until full costs are known, including the freight costs and appropriate taxes. If the user decides not to purchase the product, the product is returned to the auction if the auction is still in progress." Further, the *Godin* reference specifically teaches removing the individual from the auction process as soon

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as a commitment to purchase is initially made (see the next few lines of the *Godin* specification) so that individual is not exposed to the further decreasing prices.

In other words, the *Godin* system is already arranged to provide an individual the ability to back out of a bid which may have been made in haste or under a sense of pressure, for example. Providing a pre-registered bid feature, which Applicant teaches to allow individuals to avoid the pressure or stress of a live auction, does not add anything to the *Godin* arrangement because it already allows for an individual to have sufficient time to consider a bid after it has been made. In *Godin's* arrangement there is no pressure associated with the commitment to purchase because a subsequent confirmation may be withheld. A pre-registered bid feature is not needed to provide individuals with the ability to avoid the stress of a live auction. In other words, Applicant's invention addresses the needs of certain individuals during an auction process in a significantly different and patentable manner compared to that taught in *Godin*. There is no benefit to adding Applicant's teachings or that of *Barzilai* to the *Godin* arrangement because it already takes into account the possibility that somebody may make a bid in error or in haste, for example, and allows that individual to not follow through on the bid as taught by the *Godin* reference.

Applicant respectfully traverses the rejection of claims 17-21 based upon the improper combination of *Godin* with *Friedland*. As the base combination cannot even be made, the addition of the *Barzilai* reference in rejecting claim 21 does not establish a *prima facie* case of obviousness, either.

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The combination of the *Godin* and *Friedland* references cannot be made. There is no motivation for making this combination because there would be no benefit to adding the teachings of the *Friedland* reference to the *Godin* reference. *Friedland* specifically teaches a live auction system where a human proxy interacts with remotely located potential bidders during an increasing price auction. The human proxy gathers information from potential remote bidders and, when appropriate, submits a bid in person at the live auction. This has no use in the *Godin* system, which is entirely computer-based. Accordingly, the teachings of the *Friedland* system have no use or no benefit in the *Godin* arrangement. Moreover, the *Godin* system is a decreasing price auction arrangement, which is the opposite of the *Friedland* system. There is no motivation to combine and the combination cannot be made.

Moreover, even if the combination were made the result is not the same as the claimed arrangement. Nothing in the *Friedland* arrangement can be construed as a remote clock module that determines a desired timing difference between a remote clock and an auction clock at the auction site. The "sync" program of *Friedland* is described entirely in column 20, lines 18-37. It is also mentioned in column 21, lines 7-12. Nothing in the "sync" program of the *Friedland* reference can be reasonably construed as being the same as the claimed clock module. Having the status of an auction in a program "synchronized" with the status of a live auction is not the same as what is claimed in claim 17. Therefore, even if the combination could be made, the result is not the same as the claimed invention and none of claims 17-21 can be considered obvious.

There must be an appropriate legal motivation for making a combination under 35 U.S.C. §103 to establish a *prima facie* case of obviousness. In this instance, none of the

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proposed combinations made by the Examiner satisfy the legal requirements of 35 U.S.C. §103. There is no benefit to making the combinations and the result is not even the same as the claimed invention in many instances so that none of the claims can be considered obvious. Applicant respectfully requests a Notice of Allowance as soon as possible.

Respectfully submitted,

CARLSON, GASKEY & OLDS

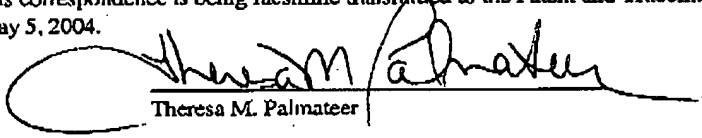
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Dated: May 5, 2004

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 872-9306) on May 5, 2004.


Theresa M. Palmateer

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